

1 UNITED STATES DISTRICT COURT

2 FOR THE

3 DISTRICT OF MINNESOTA

4

5 C.A. No. 16-cv-1054 (WMW/DTS)

6 -----

7 FAIR ISAAC CORPORATION, )

8 Plaintiff )

9 v. )

1 0 FEDERAL INSURANCE COMPANY AND ACE )

1 1 AMERICAN INSURANCE COMPANY, )

1 2 Defendants )

1 3 -----

1 4 CONFIDENTIAL TRANSCRIPT

1 5 ATTORNEYS' EYES ONLY

1 6

1 7 DEPOSITION OF MICHAEL SAWYER

1 8 October 2, 2018

1 9 Courtyard Marriott

2 0 35 Foxborough Boulevard

2 1 Foxborough, Massachusetts

2 2

2 3 \*\*\*\*\*

2 4 Court Reporter: Amie D. Rumbo

EXHIBIT

21

1 Q. Okay. Would it have been a regular  
2 practice to have periodic discussions about  
3 particular client accounts in which you would send  
4 all various license agreements along with the most  
5 recent public information about the client?  
6 **A. No.**  
7 Q. So this would not have been  
8 something that was done, say, on a quarterly basis  
9 or an annual basis, right?  
10 **A. No, it would not.**  
11 Q. So instead, the reason for this  
12 would have been to have a discussion about a  
13 particular project; is that fair?  
14 MR. HINDERAKER: Objection. Lack  
15 of foundation.  
16 **A. I do not recall the genesis for**  
17 **this meeting, and it would be speculating to**  
18 **determine why I sent this out.**  
19 Q. Right. And I'm not asking you to  
20 speculate, but would you periodically send out, at  
21 the request of the contract partner, the various  
22 software licenses for a particular account and the  
23 most recent client information in order to discuss  
24 a new project or an existing project?

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1 **A. That -- yes. So, you know, if**  
2 **there was a question, a new project, dialogue that**  
3 **the client partner would have with the account,**  
4 **yes, it would be in my scope of responsibility to**  
5 **coordinate a discussion on behalf of that client**  
6 **partner and to, you know, gather relevant**  
7 **materials internally to support those discussions.**  
8 Q. Okay. And would there have been  
9 any other reason to have sent out all of the  
10 software licenses for a particular client and the  
11 most recent information about that client other  
12 than to discuss either a new project or a pending  
13 project?  
14 **A. It's possible, but I think most**  
15 **likely it was to discuss a project or an inquiry**  
16 **from the client.**  
17 Q. Okay. Fair enough. And you don't  
18 recall a particular project that was discussed in  
19 connection with this e-mail; is that fair?  
20 **A. I do not.**  
21 Q. Do you see the reference to a plan  
22 for Chubb Europe?  
23 **A. Yes, I see that.**  
24 Q. What was the plan for Chubb Europe?

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1 **A. I do not know.**  
2 Q. Now, were you, at that time,  
3 familiar with the actual license and the  
4 amendments that Chubb had with FICO?  
5 **A. I cannot be certain if I had**  
6 **reviewed them prior to this meeting or not. So I**  
7 **can't say yes or no to that question.**  
8 Q. Did you have any understanding as  
9 to the -- at that time as to the geographical  
10 scope of the FICO license with Chubb?  
11 **A. Not that I can recall. At that**  
12 **point in time, it would have been the client**  
13 **partner's responsibility for managing that. So**  
14 **Ian Brodie would have been the client partner at**  
15 **that time and that would be in his responsibility.**  
16 Q. Now, were you familiar at that time  
17 or did you familiarize yourself with the Chubb  
18 software license and the amendments to that  
19 license?  
20 **A. I most likely did. FICO stores**  
21 **their contracts separately in the contracts**  
22 **library based upon, you know, each executable**  
23 **agreement, and so the three contracts that you**  
24 **provided here in Exhibit 73 would have been stored**

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1 **separately within our contract system. And based**  
2 **on that, you know, I can't be certain that I did**  
3 **trace everything back through all the separate**  
4 **contracts. You know, it's most likely I would**  
5 **have gone and read the amendment, too, right, as**  
6 **the most recent to reflect the status of the**  
7 **relationship. So I cannot be certain that I went**  
8 **back and read the full 17 pages of the original**  
9 **agreement.**  
10 Q. So are you familiar with this  
11 software license and maintenance agreement?  
12 **A. Generally, yes.**  
13 Q. Okay.  
14 **A. Not the specifics as it pertains to**  
15 **the unique language for Chubb.**  
16 Q. Do you recall, at that time, when  
17 there was a discussion about a plan for Chubb  
18 Europe any internal discussions about the scope of  
19 this software license and maintenance agreement?  
20 **A. I do not. You know, looking at the**  
21 **attendees on that list, Ian Brodie was the client**  
22 **partner who was responsible for that. Russ**  
23 **Schreiber was the client partner when the license**  
24 **agreements were sold to Chubb. So I was -- I**

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1 believe I was mostly a coordinator in this effort.  
2 Those two individuals were the authoritative  
3 figures on the relationship with Chubb.  
4 Q. Was it your understanding that the  
5 basic FICO software license excluded client  
6 affiliates from using the license?  
7 MR. HINDERAKER: Could I ask a  
8 clarifying question? When you say basic, are  
9 you talking about the license with Chubb or  
10 just --  
11 MR. FLEMING: In general.  
12 MR. HINDERAKER: Just a general.  
13 A. I'm not aware of what our standard  
14 language was related to affiliates, although it  
15 was a common item for negotiation with clients in  
16 general.  
17 Q. What was a common part of  
18 negotiation?  
19 A. Determining the definition of  
20 affiliates within the contracts.  
21 Q. Okay. Do you recall any  
22 discussions in 2008 as to whether the FICO license  
23 agreement permitted use by a Chubb affiliate in  
24 Europe?

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1 MR. HINDERAKER: Same clarifying  
2 question. Are we talking about the Chubb  
3 license or just general licenses now?  
4 MR. FLEMING: This license.  
5 MR. HINDERAKER: Okay. Thank you.  
6 A. No, I do not recall any discussion  
7 that took place in 2008.  
8 Q. Do you recall any discussions about  
9 that topic while you were at FICO?  
10 A. I do.  
11 Q. What do you recall?  
12 A. I recall, at some point after I  
13 assumed responsibility as client partner for  
14 Chubb, reviewing the agreements and at that point  
15 in time, I realized the territory clause within  
16 the original software license service agreement.  
17 And you know, it clarified for me, you know, the  
18 scope of amendment two based on that territory  
19 clause. And it highlighted for me, you know, a  
20 potential discrepancy in the way that my  
21 predecessors had, you know, interpreted that  
22 clause.  
23 Q. And when you're talking about your  
24 predecessors, are you referencing Ian Brodie or

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1 anybody else?  
2 A. Ian Brodie and Russ Schreiber.  
3 Q. How had they interpreted that  
4 clause; what was the discrepancy that you just  
5 referenced?  
6 MR. HINDERAKER: Which question do  
7 want? Objection. And multiple questions.  
8 Which question do you want answered?  
9 A. Can you clarify your question,  
10 please?  
11 Q. What discrepancy are you  
12 referencing?  
13 A. The extent to which the enterprise  
14 license in amendment two applies from a territory  
15 perspective.  
16 Q. What do you mean by that?  
17 A. I can't speak to, you know, Ian or  
18 Russ's interpretation of the agreement; however,  
19 based on knowledge that I had, you know, in  
20 working with Henry Mirolyuz and the team at Chubb,  
21 that there may have been some use of the products  
22 for Chubb businesses outside the United States.  
23 And so when I read the agreements, went back  
24 through the territory, I, you know, highlighted

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1 that to Russ Schreiber. I can't be certain on the  
2 date.  
3 Q. So when you say you highlighted  
4 that to Russ Schreiber, are you referencing an  
5 e-mail that you sent him at that time?  
6 A. No. It would have been in  
7 discussion.  
8 Q. Was it ever memorialized in an  
9 e-mail?  
10 A. I couldn't recall for the nine  
11 years that I worked at FICO if I wrote an e-mail  
12 or not, but most likely it was in discussion with  
13 Russ.  
14 Q. And when was that discussion?  
15 A. So it would be during the period of  
16 time that I was a client partner responsible for  
17 the Chubb account. So it was somewhere between  
18 March 2010 and February 2014. My guess is it's in  
19 that period of time when I was responsible for the  
20 account.  
21 Q. So in responding to that question,  
22 you were referencing the LinkedIn document, right?  
23 A. Yes.  
24 Q. So you don't have a separate

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